

FILED

AUG 25 2003

NOT FOR PUBLICATION

**UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT**

**CATHY A. CATTERSON
U.S. COURT OF APPEALS**

WELVIE JOHNSON,

Plaintiff - Appellant,

v.

SUSAN HUBBARD; J. DIGGS; C.
TAYLOR; T. KOPEC; E. AGREGARDO;
C. MOAZAM; S. GEISER; K. MARKEY;
PRUDHOMME, Captain; J.
SCHIEVELBEIN,

Defendants - Appellees.

No. 02-15921

D.C. No.
CV-98-01721-GEB(PAN)

MEMORANDUM*

Appeal from the United States District Court
for the Eastern District of California
Garland E. Burrell, District Judge, Presiding

Submitted July 18, 2003**
San Francisco, California

* This disposition is not appropriate for publication and may not be cited to or by the courts of this circuit except as provided by Ninth Circuit Rule 36-3.

** This panel unanimously finds this case suitable for decision without oral argument. See Fed. R. App. P. 34(a)(2).

Before: REINHARDT, SILER,^{***} and HAWKINS, Circuit Judges.

Welvie Johnson, a California state prisoner, appeals the district court's grant of summary judgment in his 42 U.S.C. § 1983 action alleging deliberate indifference to his safety. The district court erred in granting summary judgment because the evidence presented creates genuine issues of material fact as to whether prison officials knew of and disregarded an excessive risk to Johnson's safety when they placed him in the general prison population, where he was attacked. See Farmer v. Brennan, 511 U.S. 825, 837 (1994); Gallegos v. City of Los Angeles, 308 F.3d 987, 990 (9th Cir. 2002). Viewing the evidence in the light most favorable to Johnson, the record shows that prison officials had knowledge of the serious risk of harm that would exist when Johnson, a high-ranking gang defector and known "snitch," was placed in the general population.

REVERSED AND REMANDED.

^{***} Honorable Eugene E. Siler, Jr., Senior United States Circuit Judge for the Sixth Circuit, sitting by designation.